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Attorneys for Plaintiff Stephen Russell

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

STEPHEN RUSSELL, an individual,  
  
Plaintiff,

vs.

NIR MAMAN, an individual; CT707 ISRAELI  
KRAV SYSTEMS, INC., an Ontario  
corporation; GEORGE AKKELQUIST, an  
individual; DFW METROPLEX TRAINING  
ACADEMY, a Texas entity form unknown;  
RYAN MICHELETTI, an individual; LEGION  
INDUSTRIES, INC., a California corporation;  
SHIELD CORPS SECURITY, a California  
entity form unknown; and DOES 4 Through 20,  
Inclusive,

Defendants.

AND RELATED COUNTERCLAIMS

Case No: 3:18-CV-006691-RS

**PLAINTIFF'S NOTICE OF MOTION TO  
QUASH A SUBPOENA AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Date: March 3, 2022

Time: 1:30 p.m.

Judge: Hon. Richard Seeborg

Trial Date: April 18, 2022

PLEASE TAKE NOTICE that on March 3, 2022 at 1:30 p.m., or as soon thereafter as may  
be heard in Courtroom 3, 17<sup>th</sup> Floor of the United States District Court for the Northern District of  
California, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiff Stephen  
Russell ("Plaintiff") will move this Court for an order quashing the January 19, 2022 deposition

1 subpoena served by Defendants Ryan Micheletti, Legion Industries, Inc. and Shield Corps  
2 Security (collectively “Defendants”), pursuant to Fed. R. Civ. P. 45.

3 Defendants’ subpoena, which seeks to compel the deposition of Plaintiff’s expert witness,  
4 Marc Botello, was served after the January 18, 2022 deadline to complete expert discovery and is  
5 therefore an improper attempt to circumvent the Court’s discovery Order dated August 6, 2021.

6  
7 Dated: January 26, 2022

PECKAR & ABRAMSON, P.C.

8  
9 By: 

Brian D. Waller, Esq. (admitted *pro hac vice*)

Anthony J. Melon, Esq. (admitted *pro hac vice*)

Plaintiff STEPHEN RUSSELL

**MEMORANDUM OF POINTS AND AUTHORITIES**

**FACTUAL BACKGROUND**

On August 6, 2021, the Court so ordered a stipulation, jointly executed by the parties, extending all scheduling deadlines. *Exhibit A*. Expert discovery was to be completed by January 18, 2022. *Id.* The trial date is April 18, 2022. *Id.*

On January 19, 2022, *the day after the close of expert discovery*, counsel for Defendants emailed a subpoena to Plaintiff's counsel seeking to compel the deposition of Plaintiff's expert on February 17, 2022, *one month after the close of expert discovery*. *Exhibit B*.

Defendants have not moved to modify or extend the date for completion of expert discovery, which has already passed.

**ANALYSIS**

**I. PLAINTIFF'S MOTION IS TIMELY**

"To excuse compliance, a motion to quash must be made before the production or deposition date identified in the subpoena." *Anderson v. Abercrombie & Fitch Stores, Inc.*, 2007 U.S. Dist. LEXIS 47795, AT \*25, 2007 WL 1994059 (S.D. Cal. July 2, 2007) (*Exhibit C*); *see also Franco v. Alorica Inc.*, 2021 U.S. Dist. LEXIS 245906, at \*9, 2021 WL 6104816 (C.D. Cal. Nov. 5, 2021) (*Exhibit D*). Here, Plaintiff's Motion has been filed well before the proposed deposition date and one week after the improper subpoena was served. The motion is therefore timely.

**II. THE SUBPOENA WAS IMPROPERLY ISSUED TO CIRCUMVENT A COURT-ORDERED DISCOVERY DEADLINE**

Assuming it was even proper to issue a subpoena to Plaintiff's expert,<sup>1</sup> "subpoenas under Rule 45 are discovery, and must be utilized within the time period permitted for discovery in a case." *Integra Lifesciences I, Ltd. v. Merck KgaA*, 190 F.R.D. 556, 561 (S.D. Cal. 1999). In

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<sup>1</sup> District and circuit courts disagree as to whether Fed. R. Civ. P. 45 can be used to obtain discovery from a party, however, "[t]his court finds more persuasive the majority of cases concluding that Rule 45 subpoenas may, at least in some situations, be used to acquire documents from parties." *Bf&W Assocs. v. Motorola, Inc.*, 2006 U.S. Dist. LEXIS 114797, at \*5 (N.D. Cal. Aug. 28, 2006) (footnote 4). *Exhibit E*.

1 *Rosado v. Alameida*, the Southern District of California summarized the extensive agreement  
 2 between the federal courts: “[n]umerous courts have concluded that Rule 45 subpoenas should not  
 3 be used after the discovery deadline to obtain documents that could have been obtained through  
 4 discovery.” 2006 U.S. Dist. LEXIS 105328, at \*3, 2006 WL 8455351 (S.D. Cal. Dec. 18, 2006)  
 5 (quoting *So v. 514 10<sup>th</sup> St. Assocs., L.P.*, 834 A.2d 910- 914-915 (D.C. 2003)) (*Exhibit F*); *see also*  
 6 *FTC v. Netscape Communs. Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000).

7 The Court’s August 6, 2021 Order established January 18, 2022 as the deadline to  
 8 complete all expert discovery. The subpoena was served on January 19, 2022. Defendants did not  
 9 seek an extension of the discovery deadline with the Court prior to the deadline passing and has  
 10 not made any such application to date. Thus, the subpoena improperly seeks to extend expert  
 11 discovery beyond the deadline jointly stipulated to by the parties and so ordered by the Court. The  
 12 purpose of the revised discovery deadlines was to provide all parties with the time necessary to  
 13 complete all remaining discovery. The subpoena seeks to compel the deposition of Plaintiff’s  
 14 expert witness on February 17, 2022 – nearly a month after the original deadline and *after* the  
 15 deadline for the court to hear dispositive motions (February 3, 2022). The failure to comply with  
 16 the discovery deadlines is a self-created harm for which Defendants are responsible.

17 Accordingly, Defendant’s subpoena attempts to circumvent applicable discovery deadlines  
 18 – an endeavor rejected by the precedent of this Court and by federal courts across the country.

### 19 CONCLUSION

20 Based upon the foregoing, Plaintiff Stephen Russell respectfully submits that his Motion to  
 21 Quash should be granted.

22 Dated: January 26, 2022

23 PECKAR & ABRAMSON, P.C.

24 By: 

25 Brian D. Waller, Esq. (admitted *pro hac vice*)  
 26 Anthony J. Melon, Esq. (admitted *pro hac vice*)  
 27 Plaintiff STEPHEN RUSSELL

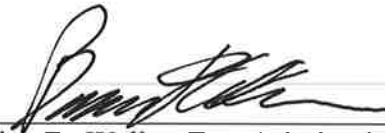
PROOF OF SERVICE

I hereby certify that on the 26th day of January 2022, I served a true and correct copy of the foregoing **PLAINTIFF'S NOTICE OF MOTION TO QUASH A SUBPOENA AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT and DECLARATION OF BRIAN D. WALLER** to all parties via the Court's CM/ECF System. The Notice of Electronic Filing (NEF) will be served on all parties by operation of the Court's CM/ECF system, and the parties may access the filing through the Court's CM/ECF system.

Dated: January 26, 2022

PECKAR & ABRAMSON, P.C.

By:



Brian D. Waller, Esq. (admitted *pro hac vice*)  
Anthony J. Melon, Esq. (admitted *pro hac vice*)  
Plaintiff STEPHEN RUSSELL